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JUL 26 2012

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July 26, 2012

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

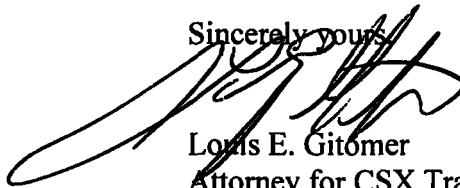
Re: Finance Docket No. 35626, *CSX Transportation, Inc. – Trackage Rights
Exemption – Norfolk Southern Railway Company*

Dear Ms. Brown:

Enclosed are the original and 10 copies of the Notice of Exemption, a diskette containing a WORD and pdf version of the Notice, and a check in the amount of \$1,100 is to cover the filing fee.

Please time and date stamp the extra copy of the filing and return it in the enclosed pre-paid envelope. Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,



Louis E. Gitomer
Attorney for CSX Transportation, Inc.

Enclosures

FEE RECEIVED
JUL 26 2012

**SURFACE
TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
JUL 26 2012
**Part of
Public Record**

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JUL 26 2012

**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35626

CSX TRANSPORTATION, INC.—TRACKAGE RIGHTS EXEMPTION—
NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

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SURFACE
TRANSPORTATION BOARD

Steven C. Armbrust, Esq.
CSX Transportation, Inc.
500 Water Street J-150
Jacksonville, FL 32202
(904) 359-1229

Louis E. Gitomer, Esq.
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgrailaw.com

Attorneys for: CSX Transportation, Inc.

Dated: July 26, 2012

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35626

CSX TRANSPORTATION, INC.—TRACKAGE RIGHTS EXEMPTION—
NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

CSX Transportation, Inc. (“CSXT”) submits this Verified Notice of Exemption pursuant to the class exemption at 49 C.F.R. §1180.2(d)(7) for overhead and local trackage rights over a rail line of the Norfolk Southern Railway Company (“NSR”) in West Virginia. The overhead and local trackage rights are between milepost WG12.0, near Helen, and milepost WG23.6, at Pemberton, a distance of approximately 11.6 miles (the “Pemberton Line”), and permit CSXT to serve all existing and future customers whatsoever at any point or connection located on the Pemberton Line, including access to and use of NSR’s side tracks at Helen, West Virginia and Amigo, West Virginia, for use as interchange facilities between NSR and CSXT, including, but not limited to, use of those side tracks with respect to service to East Gulf Mine and other Stone Coal Branch traffic handled by agreement for CSXT by NSR from time to time.

A predecessor of CSXT was granted certain trackage rights by a predecessor of NSR in an Agreement dated as of March 27, 1959 (the “1959 Agreement”), which was approved by the Interstate Commerce Commission. *Norfolk & W. Ry. Co. Merger*, 307 I.C.C. 401 (1959) (the

“1959 Decision”). The 1959 Agreement included the Pemberton Line, among other rail lines. In 1995, CSXT and NSR entered a Lease Agreement dated as of January 26, 1995 (the “Lease”). *See CSX Transportation, Inc.-Lease and Operation Exemption-Norfolk and Western Railway Company*, ICC Finance Docket No. 32768 (ICC served October 27, 1995). Under the Lease, CSXT leased the line between Helen, milepost WG-12.0 and McVey, milepost WG-25.5, a distance of 13.5 miles (the “McVey Line”), including the Pemberton Line.

In Section 12 of the Lease, NSR reserved the right to cancel the Lease on 30 days notice “providing that [NSR] shall offer to CSXT by means of a new or existing trackage rights or other appropriate agreement the right [to] use the [Pemberton Line] for its own purposes with its own trains and crews.” NSR’s attempt to comply with Section 12 of the Lease by filing a unilateral Notice of Exemption with the Board seeking to grant CSXT local and overhead trackage rights on the Pemberton Line was rejected by the Board. *CSX Transportation, Inc.-Trackage Rights Exemption-Norfolk Southern Railway Company*, STB Docket No. FD 35516 (STB served June 14, 2011).

CSXT and NSR have since negotiated a Trackage Rights Agreement that modifies CSXT’s rights under the Lease to operate over the McVey Line, including the Pemberton Line. Because of those modifications, CSXT is filing this Notice of Exemption.

CSXT recognizes that it retains rights and obligations to provide common carrier service between Helen and McVey pursuant to the Lease until such time as CSXT receives and consummates discontinuance authority from the Board under 49 U.S.C. §10903. CSXT has

begun the process for filing a Petition for Exemption to discontinue service authorized under the Lease between Helen and McVey, and expects to file the petition concurrent with the effective date of this notice.

The parties have entered a written agreement for the trackage rights, which are not sought as a responsive application in a rail consolidation proceeding.¹

Pursuant to the Surface Transportation Board's (the "Board") regulations at 49 C.F.R. § 1180.4(g), CSXT submits the following information:

Section 1180.6 Supporting Information

(a)(1)(i) Description of Proposed Transaction

CSXT is acquiring overhead and local trackage rights over a rail line of NSR in West Virginia. The trackage rights are between milepost WG12.0, near Helen, and milepost WG23.6, at Pemberton, a distance of approximately 11.6 miles, and permit CSXT to serve all existing and future customers whatsoever at any point or connection located on the Pemberton Line, including access to and use of NSR's side tracks at Helen, West Virginia and Amigo, West Virginia, for use as interchange facilities between NSR and CSXT; including, but not limited to, East Gulf Mine and other Stone Coal Branch traffic handled by agreement for CSXT by NSR from time to time. A color map showing the Line is attached hereto in Exhibit C.

¹ A redacted version of the Trackage Rights Agreement is attached hereto in Exhibit A. An unredacted copy of the Trackage Rights Agreement is being concurrently filed with a Motion for Protective Order.

The carriers involved in this transaction and their business addresses are:

CSX Transportation, Inc.
500 Water Street J-150
Jacksonville, FL 32202

Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510

Questions and correspondence concerning this notice may be addressed to:

Louis E. Gitomer
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(401) 296-2250
Lou@lgraillaw.com

(a)(1)(ii) Consummation Date

The transaction is scheduled to be consummated on or shortly after August 25, 2012.

(a)(1)(iii) Purpose Sought to be Accomplished

NSR terminated the Lease in order to again serve the McVey Line and to maintain it with NSR employees. CSXT is being granted trackage rights over the Pemberton Line in order to use the Pemberton Line for its own purposes with its own trains and crews.

(a)(5) List of States in which the Party's Property is Situated

CSXT owns and operates about 21,000 miles of railroad in the States of Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, the District of Columbia,

and the Provinces of Ontario and Québec.

NSR owns and operates railroad property in the States of Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia and the District of Columbia,

The overhead and local trackage rights are located in the State of West Virginia.

(a)(6) Map

A color map illustrating the involved trackage rights is attached as Exhibit C.

(a)(7)(ii) Agreement

A copy of the redacted executed Trackage Rights Agreement is attached as Exhibit A.

Labor Protection

Any employees of CSXT or NSR who may be adversely affected by the acquisition of the trackage rights that are the subject of this Notice are entitled to protection under the conditions imposed in *Norfolk and Western Railway Ry. Co.–Trackage Rights–BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc. –Lease and Operate*, 360 I.C.C. 653 (1980).

Section 1180.4(g)(4)(i) Supporting Information

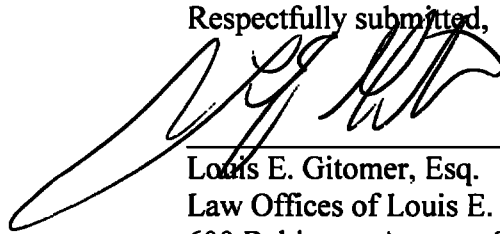
(i)(A) There are no limitations on future interchange with a third party connecting carrier in the Trackage Rights Agreement. CSXT and NSR are the only carriers that interchange on the Pemberton Line.

(i)(B) A redacted copy of the Trackage Rights Agreement is attached hereto in Exhibit A.

Environmental and Historic Matters

Environmental and historic impacts associated with trackage rights transactions generally are considered to be insignificant. Therefore, environmental and historical reports and documentation normally need not be submitted for this type of transaction, pursuant to 49 C.F.R. § 1105.6(c)(4) and § 1105.8(b)(3).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'L. Gitomer', is written over a horizontal line.

Steven C. Armbrust, Esq.
CSX Transportation, Inc.
500 Water Street J-150
Jacksonville, FL 32202
(904) 359-1229

Louis E. Gitomer, Esq.
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgraillaw.com

Attorneys for: CSX Transportation, Inc.

Dated: July 26, 2012

VERIFICATION

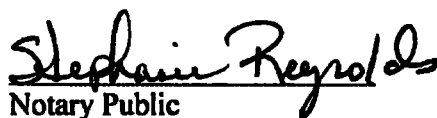
State of Florida)
)ss
County of Duval)

I, Christopher Maffett, being duly sworn, depose and state that I am Director Joint Facilities Agreements of CSX Transportation, Inc., that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption, and know the facts asserted therein are true and accurate to the best of my knowledge, information and belief.



Christopher Maffett

Subscribed and sworn to before me this 26th day of July 2012.

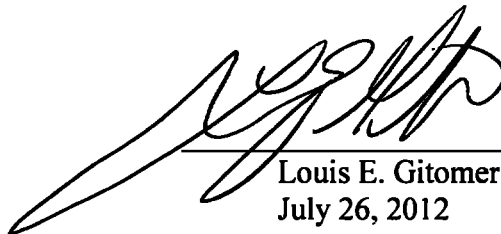

Notary Public

My Commission expires: 9-11-2012



CERTIFICATE OF SERVICE

I hereby certify that I have caused the Verified Notice of Exemption in Finance Docket 35626, *CSX Transportation, Inc.—Trackage Rights Exemption—Norfolk Southern Railway Company*, to be served by first class mail, postage pre-paid on the Secretary of the United States Department of Transportation, the Attorney General of the United States, the Federal Trade Commission and the Governor, Public Service Commission, and Department of Transportation of the State of West Virginia.



Louis E. Gitomer
July 26, 2012

EXHIBIT A-AGREEMENT

TRACKAGE RIGHTS AGREEMENT
Between
NORFOLK SOUTHERN RAILWAY COMPANY
And
CSX TRANSPORTATION, INC.

This AGREEMENT, entered into as of this 18th day of May, 2012, by and between NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation (herein referred to as "Owner" or "NSR") and CSX TRANSPORTATION, INC., a Virginia corporation, (herein referred to as "User" or CSXT");

WITNESSETH:

WHEREAS, pursuant to the merger of Norfolk and Western Railway Company and the Virginian Railway company (predecessors of NSR), NSR and the Chesapeake and Ohio Railway Company (predecessor to CSXT) exchanged certain rights in an agreement dated March 27, 1959, which was approved in *Norfolk & W. Ry. Co. Merger*, 307 .C.C. 401, 442-443 (1959) (the "1959 Agreement"); and

WHEREAS, NSR and CSXT entered into a Lease Agreement dated January 26, 1995 with respect to NSR's line between Point "A" at Milepost WG12.0 near Helen, West Virginia and Point "B" at Milepost WG25.5 at McVey, West Virginia, including access to the CSXT connection at MP WG23.6 at Pemberton, West Virginia, a distance of approximately 13.5 miles between McVey and Amigo, WV, which was authorized in *CSX Transportation, Inc.-Lease and Operation Exemption-Norfolk and Western Railway Company*, ICC Finance Docket No. 32768 (ICC served October 27, 1995) (the "Lease Agreement"); and

WHEREAS, the Lease Agreement was Supplemented June 19, 1996 extending the term for an additional 10 years; and

WHEREAS, NSR provided CSXT a termination letter dated May 16, 2011, officially notifying CSXT that NSR would exercise its right as specified in Section 12 of the Lease Agreement to terminate said agreement effective June 16, 2011 since extended by agreement of NSR and CSXT to July 1, 2011; and

WHEREAS, as a condition of terminating the Lease, NSR must offer CSXT the right to use the former leased track between Milepost WG12.0 at or near Helen, and Milepost WG23.6 at Pemberton, for CSXT's own purposes with its own trains and crews; and

NOW, THEREFORE, NSR and CSXT, intending to be legally bound, hereby agree as follows:

ARTICLE 1. GRANT OF TRACKAGE RIGHTS

- A. Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate its trains (locomotives or cars) with its own crews (hereinafter referred to as the "Trackage Rights") over the following segments of Owner's railroad between "Point A" at Milepost WG12.0 near Helen, West Virginia, and "Point B" at Milepost WG23.6 at Pemberton, West Virginia, including access to the CSXT connection at MP WG23.6 at Pemberton, West Virginia, a distance of 11.6 miles, such line being a portion of the Winding Gulf Branch of Owner, as indicated on the plan attached hereto, made part hereof and marked "Exhibit A" (the "Joint Trackage"); trackage rights shall be granted for the purpose of CSXT using the same for non-exclusive movement of traffic, providing for overhead and local freight service, and permitting User to serve all existing and future customers whatsoever at any point or connection located on Joint Trackage.
- (i) CSXT's rights hereunder shall include the right to the non-exclusive use of all connecting, switching, mine and other tracks connected, directly or indirectly, to the Joint Trackage and related to the uses described above in this Paragraph 1.
 - (ii) In the event NSR decides to construct branch, spur, connecting, mine, switching or other tracks for the purpose of serving any coal mining operation, tipple, loading ramp, or other installation from any point on the Joint Trackage, NSR shall permit CSXT to participate on an equal basis in the costs of construction of such necessary tracks, provided that NSR shall give CSXT not less than sixty (60) days' notice in writing of its intention to construct such tracks, which shall include design and construction plans and specifications for the tracks, and CSXT shall notify NSR within thirty (30) days of the receipt of such notice of its desire to participate in such construction. In the event that CSXT notifies NSR within such thirty (30) day period of its desire to participate in such construction, CSXT shall, upon agreeing to pay one-half of the costs of construction, have the right to the joint use with NSR of such tracks so constructed, otherwise CSXT shall have no rights to use any tracks so constructed by NSR and NSR shall pay 100 percent of the construction cost. NSR shall own any such tracks to the extent constructed on NSR's property hereunder, regardless of whether NSR participates in paying the costs thereof, and shall have the right to perform any construction that takes place on property owned or under the control of NSR, and CSXT shall, to the extent of its responsibility for the costs of construction as provided herein and to the extent constructed in accordance with the plans provided herein, reimburse NSR for the costs of the same. Ownership of any such tracks on property not owned by NSR shall be determined by agreement among the parties involved based on the facts and circumstances of the project.
 - (iii) In the event CSXT decides to construct branch, spur, connecting, mine, switching or other tracks for the purpose of serving any coal mining operation, tipple, loading ramp, or other installation from any point on the Joint Trackage, not less than sixty (60) days prior to commencing construction, CSXT shall give NSR

written notice that will (a) provide NSR with designs and construction plans and specifications for the tracks, and (b) permit NSR to participate on an equal basis. Within thirty (30) days of receipt of the notice from CSXT, NSR shall (i) review, modify as appropriate, and approve the design and construction plans provided by CSXT with respect to any construction that will take place on property owned or under the control of NSR, which approval shall not be unreasonably withheld or delayed, and (ii) notify CSXT of its desire to participate in such construction. In the event that NSR notifies CSXT within such thirty (30) day period of its desire to participate in such construction, NSR shall, upon agreeing to pay one-half of the costs of construction, have the right to the joint use with CSXT of such tracks so constructed; otherwise, NSR shall have no rights to use any tracks so constructed by CSXT and CSXT shall pay 100 percent of the construction costs. NSR shall own any such tracks to the extent constructed on NSR's property hereunder, regardless of whether NSR participates in paying the costs thereof, and shall have the right to perform any construction that takes place on property owned or under the control of NSR, and CSXT shall, to the extent of its responsibility for the costs of construction as provided herein and to the extent constructed in accordance with the plans approved herein, reimburse NSR for the costs of the same. Ownership of any such tracks on property not owned by NSR shall be determined by agreement among the parties involved based on the facts and circumstances of the project.

- B. NSR hereby further grants to CSXT access to and use of NSR's side tracks at Helen, West Virginia (the "Helen Side Track") and Amigo, West Virginia (the "Amigo Side Track"), at no charge, for use as interchange facilities between NSR and CSXT; including, but not limited to, use of those side tracks for interchange with respect to service to East Gulf Mine and other Stone Coal Branch traffic handled by agreement for CSXT by NSR from time to time. NSR retains the right to use the Helen Side Track and the Amigo Side Track for its own operating purposes, as well as for interchange with CSXT. Notwithstanding the preceding, interchange operations by CSXT and NSR on the Helen Side Track and the Amigo Side Track will be agreed upon by local CSXT and NSR operating officers in accordance with Standard AAR Rules governing interchange pending a formal interchange agreement.

ARTICLE 2. USE OF JOINT TRACKAGE

- A. User's use of the Joint Trackage shall be in common with Owner and any other user of the Joint Trackage, and Owner's right to use the Joint Trackage shall not be diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature in the Joint Trackage.
- B. Operations of the Joint Trackage shall be under the control of the Owner and subject to its rules and regulations. It is further understood and agreed that operations of trains, local service, or switching services under trackage rights described shall be conducted, arranged and permitted in a fair and impartial manner, and that the operation of trains,

local service, or switching services by User shall be prompt, efficient, equal and reasonable insofar as sound operating practices permit.

- C. Owner shall have exclusive control of the management and operation of the Joint Trackage. User shall not have any claim against Owner for liability on account of loss or damage of any kind in the event the use of the Joint Trackage by User is interrupted or delayed at any time from any cause.

ARTICLE 3. MISCELLANEOUS SPECIAL PROVISIONS

- A. When operating over the Joint Trackage, User's locomotives and crews shall be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Joint Trackage.
- B. Procedures for qualification and occupancy of the Joint Trackage shall be arranged by the local supervision of each carrier. All control and usage shall be subject to the approval of Owner's representative or his designee.

ARTICLE 4. COMPENSATION

- A. CSXT shall pay NSR a sum of per car mile for each empty and loaded railcar moved over the Joint Trackage hereinafter called "Current Charge".
- B. CSXT will furnish to NSR, in care of Manager Miscellaneous Billing - Roanoke, VA or their designates, at the end of each month, a statement of the number of cars operated over the Joint Trackage during the month. Based on this statement, NSR will render to CSXT a bill, computed in accordance with the provisions of this Section 4, for CSXT's use of the Joint Trackage.

ARTICLE 5. REVISION OF CURRENT CHARGE

- A. The Current Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs as hereinafter provided.
- B. The Current Charge shall be revised upward or downward each year, beginning with the bill rendered for the month of July 2012 to compensate for 75% of the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East

District shall be used. The Current Charge shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year (2011 Index for the first annual adjustment) as related to the index for the previous calendar year (2010 Index for the first annual adjustment) and applying that percent to the Current.

- C. By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2010; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2011; "C" to be the Current Charge; "D" to be the percent of increase or decrease; and "E" to be 75% of the increase or decrease; the revised Current Charge stated herein would be revised by the following formula:

$$(1) \quad \frac{B - A}{A} = D$$

$$(2) \quad D \times 75\% = E$$

$$(3) \quad (E \times C) + C = \text{revised Current, effective July 1 of the year being revised.}$$

- D. In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration as provided hereinafter.

ARTICLE 6. PAYMENT OF BILLS

- A. All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.
- B. Bills rendered pursuant to the provisions of this Agreement shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by Owner at the time any work is performed by Owner for User.

ARTICLE 7. MAINTENANCE OF JOINT TRACKAGE

- A. Owner shall maintain, repair and renew the Joint Trackage with its own supervision and labor. Owner shall keep and maintain the Joint Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Joint Trackage or that operations thereover shall not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions shall be kept to a minimum. Furthermore, except as may be otherwise provided in Article 13, User shall not by reason of failure or neglect on the part of Owner to maintain, repair or renew the Joint Trackage, have or make any claim or demand against Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.
- B. Owner shall perform, at the expense of User, such additional maintenance as User may reasonably require or request.

ARTICLE 8. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS

- A. Existing connections or facilities that are jointly used by the parties hereto shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements.
- B. For projects provided for in Article 1, paragraphs (A)(ii) or (iii), responsibility for the maintenance, repair or renewal of the associated tracks and other improvements (collectively "Maintenance"), shall be as follows:
 - (i). Maintenance within Owner's property shall be the responsibility of Owner.
 - (ii) Maintenance outside of Owner's property shall, as between the parties to this Agreement, be the responsibility of the party who initiated the project (the "Initiating Party").
 - (iii) If User is the Initiating Party of a project, and Owner does not elect to participate in the project pursuant to the above paragraphs, User shall reimburse Owner for all annual costs incurred by Owner for Maintenance within Owner's property. If Owner elects to participate in the project, (a) User shall reimburse Owner for one-half (1/2) the foregoing costs, and (b) Owner shall reimburse User for one-half of all annual costs incurred by User for Maintenance outside of Owner's Property.
 - (iv) If Owner is the Initiating Party, and User elects to participate in the project pursuant to the above paragraphs, User shall reimburse Owner for one-half the cost of all Maintenance.

- C. Any additional connections to the Joint Trackage not provided for in Article 1, paragraphs (A)(ii) or (iii) which may be required by User shall be subject to the Owner's approval (including design) and shall be constructed, maintained, repaired and renewed as follows:
- (i). User or others shall furnish all labor and material and shall construct, maintain, repair and renew at its sole cost and expense such portions of the tracks located on the right-of-way of User or others which connect the respective lines of the parties hereto.
 - (ii). Owner shall furnish all labor and material and shall construct, maintain, repair and renew at the sole cost and expense of User such portions of the additional tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto. Upon termination of this Agreement, Owner may at its option remove the portion of such trackage and appurtenances as may be located on property of Owner, at the sole cost and expense of User. The salvage material removed shall be released to User or, as otherwise agreed upon, Owner shall credit User the current fair market value for said salvage.

ARTICLE 9. ADDITIONS, RETIREMENTS AND ALTERATIONS

- A. Owner, from time to time and at its sole cost and expense, may make changes in, additions and betterments to or retirements from the Joint Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Joint Trackage and such retirements shall be excluded from the Joint Trackage. Prior to any retirement from the Joint Trackage that is jointly owned, Owner shall give User (30) days notice of the proposed retirement and the User must approve such retirement within (20) days of receipt of the notice, which approval shall not be unreasonably withheld or delayed.
- B. If the parties agree that changes in or additions and betterments to the Joint Trackage, including changes in communication or signal facilities, are required to accommodate User's operations beyond that required by Owner to accommodate its operations, Owner shall construct the additional or altered facilities and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

ARTICLE 10. MANAGEMENT AND OPERATIONS

- A. User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains (locomotives and cars) while such trains, locomotives, cars, and equipment are

being operated over the Joint Trackage. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of User to comply with its obligations in this regard.

- B. User in its use of the Joint Trackage shall comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains (locomotives and cars,) over the Joint Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives or cars which exceed the width, height, weight or other restrictions or capacities of the Joint Trackage as published in Railway Line Clearances, and no train shall contain locomotives or cars which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner.
- C. User shall make such arrangements with Owner as may be required to have all of its employees who shall operate its trains, locomotives and cars over the Joint Trackage qualified for operation thereover, and User shall pay to Owner, upon receipt of bills therefor, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.
- D. If any employee of User shall neglect, refuse or fail to abide by Owner's rules, instructions and restrictions governing the operation on or along Owner's property, such employee shall, upon written request of Owner, be prohibited by Owner from working on Owner's property. If any party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of User, then upon such notice presented in writing, User shall promptly hold an investigation in which all parties concerned shall participate and bear the expense for its officers, counsel, witnesses and employees. Notice of such investigations to User's employees shall be given by User's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between User and its employees. If the result of such investigation warrants, such employee shall, upon written request by Owner, be withdrawn by User from service on Owner's property, and User shall release and indemnify Owner from the against any and all claims and expenses because of such withdrawal.
- E. The trains, locomotives, cars and equipment of User, Owner, and any other present or future user of the Joint Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as shall afford the most economical and efficient manner of movement of all traffic.

- F. In the event that a train of User shall be forced to stop on Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's crew, or due to mechanical failure of User's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if in emergencies, crippled or otherwise defective cars are set out of User's trains on the Joint Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Joint Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.
- G. If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Joint Trackage, such work shall be done by Owner, and User shall reimburse Owner for the cost thereof.
- H. In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the retained or additional employees not been provided.

ARTICLE 11. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in User's trains on the Joint Trackage shall be assumed by User and reported and paid by it directly to the Owner of such cars.

ARTICLE 12. CLEARING OF WRECKS

Whenever User's use of the Joint Trackage requires rerailing, wrecking service or wrecking train service, Owner shall perform or provide such service, including the repair and restoration of roadbed, track and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Article 14 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck, shall be promptly delivered to it.

ARTICLE 13. LIABILITY

The responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third persons), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, settlements, claims, judgments, litigation expenses and attorney's fees resulting from the use of the Joint Trackage and operations pursuant to Article 1(b) by either party as described herein, all of which are collectively referred to as a "Loss", shall be divided as follows:

- A. If a Loss occurs involving the trains, locomotives, engines and/or employees of only one of the parties, then the involved party should be solely responsible for the Loss, even if caused partially or completed by the other party.
- B. If a Loss occurs on the Joint Trackage involving the trains and locomotives of both Owner and User, then: (i) each is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including fading and (ii) the parties are equally responsible for any Loss to the Joint Trackage and Loss sustained by third parties regardless of the proportionate responsibility between them as to the cause of the Loss.
- C. For purposes of assigning responsibility of a Loss under this Article as between the parties hereto, a Loss involving one of the parties to this Agreement and a third party or parties shall be construed as being the sole responsibility of that one party to this Agreement.
- D. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against that liability, cost and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers agents, or employees.
- E. In every case of death or injury suffered by an employee of either User or Owner, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability of other law, and either of said parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

- F. For purposes of determining liability, pilots furnished by Owner to User pursuant to this Agreement shall be considered as the employees of User while such employees are on duty as pilots.
- G. For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Article 8 B (ii), all work performed by Owner shall be deemed performed for the sole benefit of User and, User shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of Owner. User shall protect, indemnify, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which User is responsible.
- H. If any suit or action shall be brought against either party for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.
- I. In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- J. Notwithstanding any and all of the forgoing provisions of this article, in the event a Loss occurs while the Joint Trackage is being used by Owner and/or User, and such Loss is attributable solely to the willful or wanton negligence of only one of the parties to this Agreement, then the party hereto which was so willfully or wantonly negligent shall be solely responsible for such Loss.

ARTICLE 14. CLAIMS

- A. Except as provided in Subarticle B below, all claims, injuries, death, property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.
- B. Each party shall investigate, adjust and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706.

- C. In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.
- D. All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.
- E. Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706, neither party shall settle or compromise any claim, demand, suit or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds
- F. Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, either pursuant to a collective bargaining agreement or employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.
- G. It is understood that nothing in this Article 14 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 13.

ARTICLE 15. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Joint Trackage, subject to any regulatory approval or exemption that may be required under governing law. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

ARTICLE 16. REGULATORY APPROVAL

- A. Should this Agreement require the prior approval of the Surface Transportation Board (STB), User at its own cost and expense shall initiate and thereafter diligently pursue an appropriate application, petition, or notice to secure such approval or exemption. Owner shall assist and support efforts of User to secure any necessary STB approval of this Agreement.
- B. Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the approval of this Agreement or the exemption of this Agreement from regulation, User, solely, shall be responsible for any and all payments in satisfaction of such conditions.

ARTICLE 17. ABANDONMENT OF JOINT TRACKAGE

- A. Notwithstanding the provisions of Article 18, Owner shall have the right, subject to securing any necessary regulatory approval, to abandon the Joint Trackage or any portion thereof. Before filing an application for regulatory approval or petition or notice for exemption of such abandonment, Owner shall give User ninety (90) days' advance notice in writing of its intention to do so in order that User may determine whether it desires to purchase the Joint Trackage (or portion thereof) or to discontinue its use thereof.
- B. If User desires to purchase the Joint Trackage (or such portion thereof as Owner has notified User will be abandoned), it shall submit an offer of financial assistance under 49 U.S.C. Section 10904. In the event the offer meets the requirements of the aforesaid section and Owner receives more than one such offer, Owner shall exercise its statutory right to negotiate with User rather than with the other offeror(s). Thereafter, the rights and obligations of the parties in respect to User's acquisition of the Joint Trackage or portion thereof shall be governed by applicable provisions of the law.
- C. In any one of the circumstances listed below User shall be deemed to have determined that it does not desire to purchase the Joint Trackage or portion thereof and that it desires to discontinue its use thereof:
 - (i). User fails to submit an offer of financial assistance to purchase the Joint Trackage or portion thereof within the time prescribed by statute and applicable regulations, or
 - (ii). User, having made an offer of financial assistance to purchase the Joint Trackage or portion thereof, but being unable to reach agreement with Owner as to the sale price, fails within the statutory period to request the proper regulatory authority to establish the terms and conditions of the sale, or

- (iii). User, having requested the proper regulatory authority to establish the terms and conditions of sale, withdraws its offer of financial assistance, or
- (iv). User, having requested the proper regulatory authority to establish the terms of the sale, rejects the authority's order establishing said terms or fails to accept said terms within the time prescribed by said order.

In such event User shall promptly file an application, petition, or notice with the proper regulatory authority seeking approval or exemption of the discontinuance of its operations over the Joint Trackage or portion thereof. If User does not promptly file an application seeking approval of the discontinuance of User's operations over the Joint Trackage or portion thereof, Owner shall be deemed to have been given User's power of attorney to take such action on User's behalf.

- D. In the event any application, petition, or notice filed by Owner is granted but an application, petition, or notice filed by User under Subsection C above is denied by the proper regulatory authority, the parties shall cooperate in taking such action as is reasonably necessary to effect a sale of the Joint Trackage or portion thereof to User (including securing any necessary regulatory authority) for a price consistent with the principles of 49 U.S.C. Section 10904.
- E. In the event Owner abandons any portion (or all) of the Joint Trackage or portion thereof under circumstances which (because of changes in the law or otherwise) are not subject to handling under the procedures outlined above, the parties shall cooperate and take such action as is necessary to assure that User either promptly terminates its operations over the segment to be abandoned or purchases said segment at a price consistent with the principles of 49 U.S.C. Section 10904 as interpreted on the date of this Agreement.
- F. In the event Owner's application for authority or petition or notice for exemption to abandon is denied, User shall withdraw any application, petition, or notice it has filed under Subsection C above.
- G. Except as otherwise expressly agreed in writing, in the event any actions taken by the parties under this Article 18 result in an obligation imposed by any competent authority on either or both parties hereto to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

ARTICLE 18. TERM

- A. This Agreement shall be effective the day and year first above written and shall remain in effect for twenty-five (25) years, and shall continue in effect thereafter until terminated by User upon sixty (60) days advance written notice to Owner of its intent to terminate

this Agreement or until User receives authority to discontinue the rights herein granted, whichever occurs first.

- B. Termination of this Agreement shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

ARTICLE 19. FORCE MAJEURE

Owner shall not be responsible to User for delays or failure to perform under this Agreement if such delays or failure to perform are covered by circumstances beyond its control, including, but not limited to, Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the parties hereto, embargoes or AAR service orders; Federal Railroad Administration (FRA) orders, or governmental laws, orders or regulations.

ARTICLE 20. ARBITRATION

Any dispute arising between the parties with respect to this Agreement that is not resolved with 90 days of the date of the written notice of the dispute may be jointly submitted for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association by either party. The decision of the arbitrator shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator, if any, shall be borne equally by the parties hereto. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws.

ARTICLE 21. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns, by merger or otherwise, of the parties hereto. Neither party hereto shall transfer or assign this Agreement or any of its rights, interests or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of the other party to this Agreement.

ARTICLE 22. NOTICE

Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may agree, and shall be addressed as follows:

If to Owner: VP Transportation - Operations
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510-2191

If to User: Director Joint Facilities Agreements
CSX Transportation, Inc.
500 Water Street, J315
Jacksonville, FL 32202

Either party may provide changes in the above addresses to the other party by personal service or U.S. mail.

ARTICLE 23. GENERAL PROVISIONS

- A. This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the parties hereto.
- B. Except as otherwise provided in Article 24, this Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings between the parties, regarding the subject matter hereof.
- C. No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by both parties to this Agreement.
- D. All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.
- E. All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- F. As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by,

leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.

- G. This Agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.
- H. Neither party hereto may disclose the provisions of this Agreement to a third party, excluding a parent, subsidiary or affiliate company, without the written consent of the other party, except as otherwise required by law, regulation or ruling.

ARTICLE 24. REVISIONS TO 1959 AGREEMENT

The Joint Trackage is also the subject of the 1959 Agreement. The rights and obligations created by this Agreement shall be in addition to, and in no way limit, expand, or otherwise alter, the rights and obligations of the parties under the 1959 Agreement, except that for so long as this Agreement shall remain in effect, for all movements under either agreement that travel over all or part of the Joint Trackage, (i) the provisions of this Agreement shall be applied with respect to the Joint Trackage in lieu of those of the 1959 Agreement, and (ii) any compensation calculation made pursuant to Paragraph 4 of the 1959 Agreement shall exclude the book value of, property taxes, local assessments, maintenance and renewal expenses, and the cost of operation of the Joint Trackage. If and when this Agreement ceases to be in effect, the provisions of the 1959 Agreement shall once again be fully applied to all covered trackage as stated in that agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

Witness for Railroad:



NORFOLK SOUTHERN RAILWAY COMPANY

By:



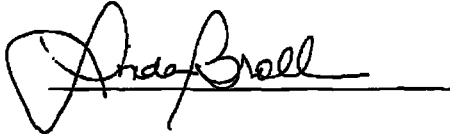
Print/Type Name:

F.M. Enters

Print/Type Title:

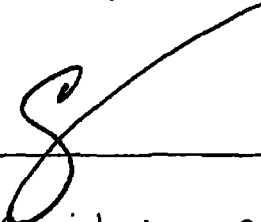
VP-Network & Service Mgmt.

Witness for Railroad:



CSX TRANSPORTATION, INC.

By:

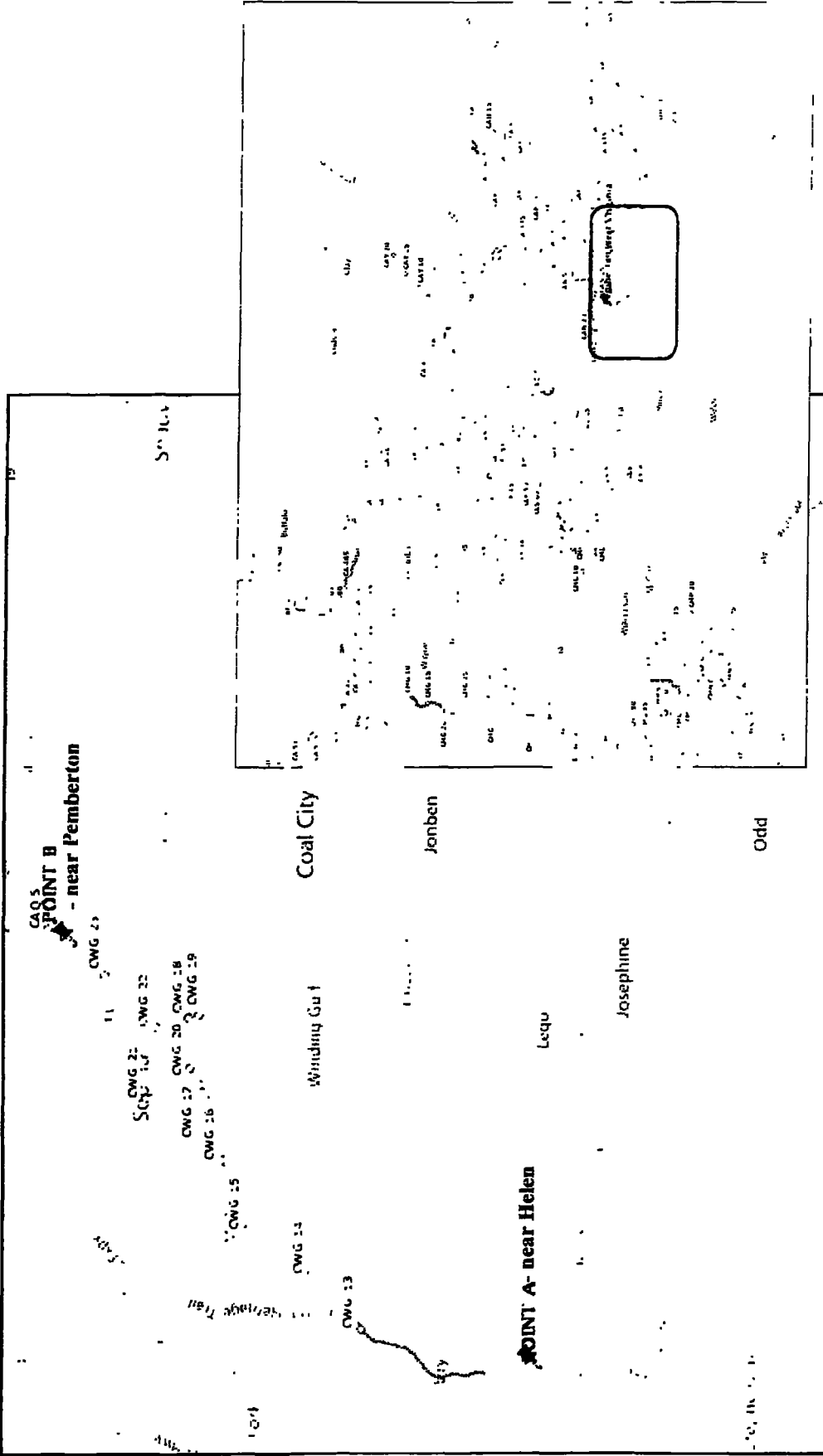


Print/Type Name:

Christopher Maffett

Print/Type Title:

Director, Network Planning



- EXHIBIT A -

TRACKAGE RIGHTS AGREEMENT CSX Transportation over Norfolk Southern Railway; between:

POINT A: Milepost WG12.0 near Helen, WV (including access and use of "Helen Side Track," and "Amigo Side Track" near Amigo, WV)

AND

POINT B: Milepost WG23.6 at Pemberton, WV (an approximate distance of 11.6 miles)

Dated: 05/01/2012

EXHIBIT B-FEDERAL REGISTER NOTICE

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 35626

CSX TRANSPORTATION, INC.—TRACKAGE RIGHTS EXEMPTION—
NORFOLK SOUTHERN RAILWAY COMPANY

The Norfolk Southern Railway Company has agreed to grant overhead and local trackage rights to CSX Transportation, Inc. (“CSXT”). The overhead and local trackage rights are between milepost WG12.0, near Helen, and milepost WG23.6, at Pemberton, a distance of approximately 11.6 miles (the “Pemberton Line”), and permit CSXT to serve all existing and future customers whatsoever at any point or connection located on the Pemberton Line, including access to and use of NSR’s side tracks at Helen, West Virginia and Amigo, West Virginia, for use as interchange facilities between NSR and CSXT, including, but not limited to, use of those sidetracks with respect to service to East Gulf Mine and other Stone Coal Branch traffic handled by agreement for CSXT by NSR from time to time. The overhead trackage rights will be effective on or after August 25, 2012.

As a condition to this exemption, any employee affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc. — Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C.

10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

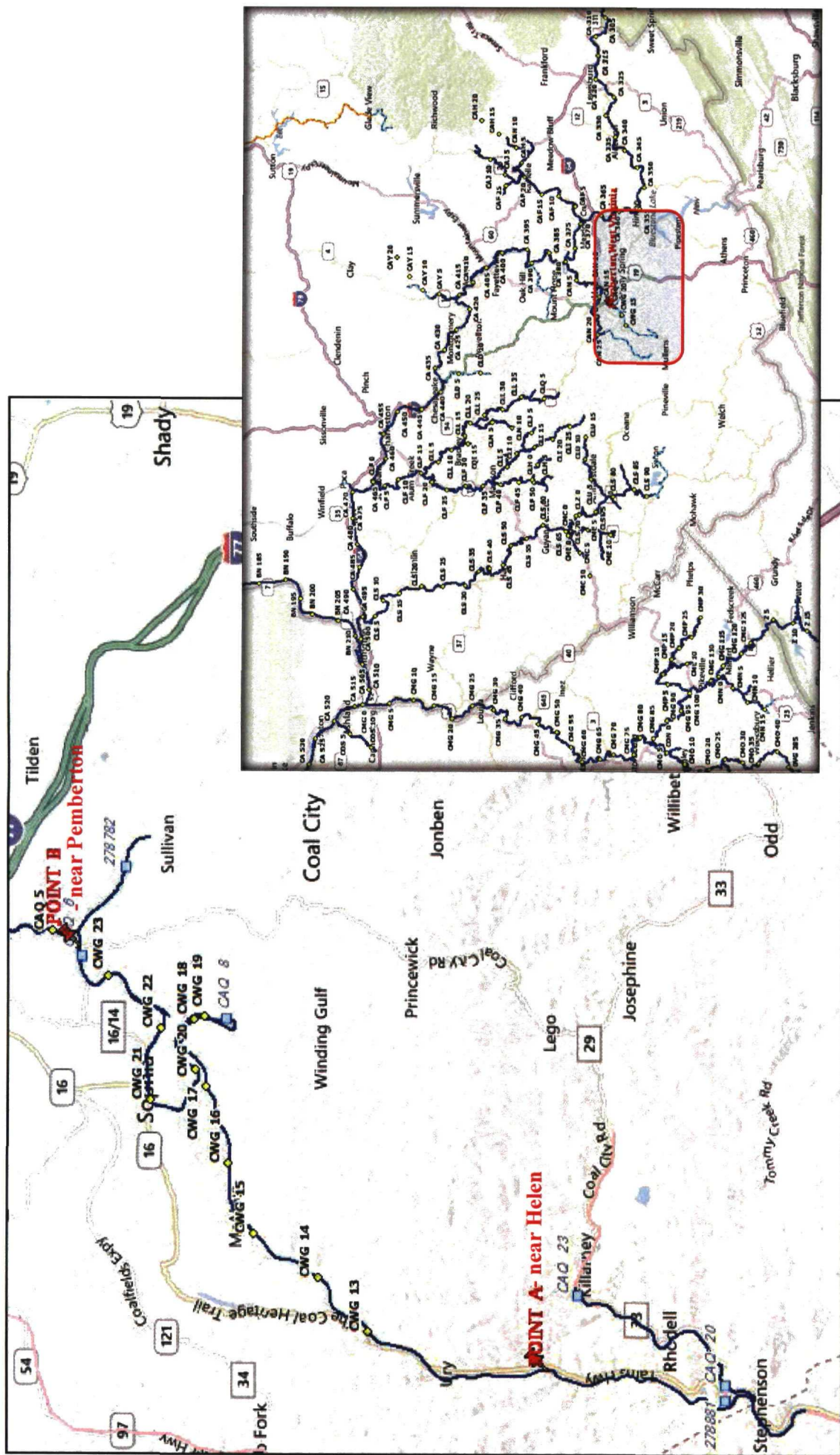
An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35626, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204, Lou@lgrailaw.com.

Board decisions and notices are available on our website at “WWW.STB.DOT.GOV.”

Decided:

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

EXHIBIT C-MAP



- EXHIBIT A -

TRACKAGE RIGHTS AGREEMENT CSX Transportation over Norfolk Southern Railway; between:

POINT A: Milepost WG12.0 near Helen, WV (including access and use of "Helen Side Track," and "Amigo Side Track" near Amigo, WV)

AND

POINT B: Milepost WG23.6 at Pemberton, WV (an approximate distance of 11.6 miles)

Dated: 05/01/2012